

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

TIMOTHY C. ROTE,

Plaintiff,

v.

**OREGON JUDICIAL DEPARTMENT,
et al.,**

Defendants.

Case No. 3:22-cv-00985-SI

ORDER

TIMOTHY C. ROTE,

Plaintiff,

v.

**OREGON JUDICIAL DEPARTMENT,
et al.,**

Defendants.

Case No. 3:23-cv-01016-SI

ORDER

Michael H. Simon, District Judge.

The above-captioned two cases are the second and third iterations (with some differences described below) of a lawsuit that the Plaintiff, Timothy C. Rote, first brought in 2019 against judges, attorneys, and others, alleging violations of his federal constitutional rights, among other

claims. Mr. Rote's first lawsuit is styled *Rote v. Committee on Judicial Conduct and Disability of the Judicial Conference of the United States, et al.*, Case No. 3:19-cv-01988-SI (D. Or.). The Court will refer to that matter as the "2019 Lawsuit." After the Court dismissed the 2019 Lawsuit, Mr. Rote appealed to the Ninth Circuit. Case No. 22-35261 (9th Cir.). On October 18, 2023, the Ninth Circuit affirmed the dismissal of the 2019 Lawsuit. Mr. Rote then asked for a panel rehearing and for a rehearing en banc. The Ninth Circuit denied both requests on January 23, 2024. On January 31, 2024, the Ninth Circuit issued its mandate in the 2019 Lawsuit.

On July 7, 2022, after the Court entered judgment in the 2019 Lawsuit but while Mr. Rote's appeal in that matter was pending before the Ninth Circuit, Mr. Rote filed what the Court will refer to as Mr. Rote's "2022 Lawsuit," styled *Rote v. Oregon Judicial Department, et al.*, Case No. 3:22-cv-00985-SI (D. Or.). The Defendants in Mr. Rote's 2022 Lawsuit filed motions to dismiss, but the Court held those motions in abeyance and stayed the 2022 Lawsuit pending the Ninth Circuit's decision in Mr. Rote's appeal of the Court's dismissal of the 2019 Lawsuit.

On July 12, 2023, also before the Ninth Circuit issued its decision in Mr. Rote's appeal of the 2019 Lawsuit, Mr. Rote filed what the Court will refer to as Mr. Rote's "2023 Lawsuit," styled *Rote v. Oregon Judicial Department, et al.*, Case No. 3:23-cv-01016-SI (D. Or.). Several Defendants in Mr. Rote's 2023 Lawsuit filed motions to dismiss, and Mr. Rote filed a motion for a preliminary injunction and a motion to disqualify certain defense counsel. The Court held those motions in abeyance and stayed the 2023 Lawsuit pending the Ninth Circuit's decision in Mr. Rote's appeal of the Court's dismissal of the 2019 Lawsuit.

After the Ninth Circuit issued its decision affirming the Court's dismissal of the 2019 Lawsuit, the Court entered an Order to Show Cause in both the 2022 and 2023 Lawsuits, asking Mr. Rote why those actions should not be dismissed for essentially the same reasons that the Court dismissed the 2019 Lawsuit. Mr. Rote timely responded to the Court's Order. The Court now addresses in this Order the motions pending in the 2022 and 2023 Lawsuits.

BACKGROUND

A. 2019 Lawsuit (Case No. 3:19-cv 01988-SI)

In his Second Amended Complaint in the 2019 Lawsuit, Mr. Rote asserted claims against the following 18 named defendants (excluding "John Does"):

1. Committee on Judicial Conduct and Disability of the Judicial Conf. of the U.S.;
2. U.S. Department of Justice;
3. Oregon Judicial Department;
4. Oregon State Bar;
5. Oregon State Bar Professional Liability Fund;
6. Colorado Judicial Department;
7. Senior U.S District Judge Robert Kugler;
8. U.S. District Judge Michael Mosman;
9. U.S. Magistrate Judge Paul Papak;
10. Colorado District Judge Elizabeth Weishaupl;
11. Oregon Circuit Judge Robert Herndon;
12. Oregon Court of Appeals Judge James Egan;
13. U.S. Attorney Billy Williams;
14. U.S. District Judge Marco Hernández;
15. Oregon Circuit Judge Kathie Steele;

16. Nancy Walker (court reporter for the U.S. District Court);
17. Carol Bernick (CEO of the Oregon Professional Liability Fund); and
18. Nena Cook (CEO of the Oregon Professional Liability Fund).¹

In his Second Amended Complaint in the 2019 Lawsuit, Mr. Rote alleged violations of his First Amendment rights pursuant to 42 U.S.C. § 1983, violations of his Fourteenth Amendment rights to due process pursuant to 42 U.S.C. § 1983, and conspiracy to violate his civil rights pursuant to 42 U.S.C. § 1985.

B. 2022 Lawsuit (Case No. 3:22-cv-00985-SI)

In his First Amended Complaint in the 2022 Lawsuit, Mr. Rote asserts claims against the following 20 named defendants (excluding “John Does”):

1. Oregon Judicial Department;
2. Oregon Professional Liability Fund;
3. Oregon Circuit Judge Ann Lininger;
4. Oregon Circuit Judge Alison Emerson;
5. Oregon Court of Appeals Judge Josephine Money;
6. Oregon Court of Appeals Judge Jacqueline Kamins;
7. Oregon Circuit Judge Kathie Steele;
8. Carol Bernick (CEO of the Oregon Professional Liability Fund);
9. Megan Livermore (CEO of the Oregon Professional Liability Fund);
10. Nina Cook (Nina Cook (CEO of the Oregon Professional Liability Fund)
11. Oregon Circuit Judge Pro Tempore Michael Wise;

¹ In his 2019 Lawsuit, Mr. Rote’s case caption did not perfectly match the text of his Second Amended Complaint. The Court’s list stated above is derived from the text of Mr. Rote’s Second Amended Complaint in the 2019 Lawsuit, ECF 51.

12. Oregon Attorney Jeffrey Edelson;
13. Deschutes County Sheriff;
14. Deschutes County Sheriff's Department;
15. Deschutes County;
16. Oregon Attorney Matthew Yium;
17. Oregon Attorney Nathan Steele;
18. Oregon Attorney Ward Greene;
19. Oregon Attorney Anthony Albertazzi; and
20. Oregon Chief Justice Martha Walters.²

In his First Amended Complaint in the 2022 Lawsuit, Mr. Rote alleges violations of his First Amendment rights pursuant to 42 U.S.C. § 1983, violations of his Fourteenth Amendment rights to due process pursuant to 42 U.S.C. § 1983, and conspiracy to violate his civil rights pursuant to 42 U.S.C. § 1985. Many of the facts alleged by Mr. Rote in the 2022 Lawsuit are similar, at least in many material respects, to the facts that he alleged in his 2019 Lawsuit.

C. 2023 Lawsuit (Case No. 3:23-cv-01016-SI)

In his First Amended Complaint in the 2023 Lawsuit, Mr. Rote asserts claims against the following 15 named defendants (excluding "John Does"):

1. Oregon Judicial Department;
2. Oregon Professional Liability Fund;
3. Chief Justice of the Oregon Supreme Court Meagan Flynn;
4. Chief Judge of the Oregon Court of Appeals Erin Lagesen;

² In his 2022 Lawsuit, Mr. Rote's case caption does not perfectly match the text of his First Amended Complaint. The Court's list stated above is derived from the text of Mr. Rote's First Amended Complaint in the 2022 Lawsuit, ECF 27.

5. Oregon Circuit Judge Michael Wetzel;
6. Appellate Commissioner for the Oregon Court of Appeals Theresa Kidd
7. Oregon Senior Circuit Judge Leslie Roberts;
8. Oregon Senior Circuit Judge Douglas Van Dyk;
9. Oregon Tax Court Judge Robert Manicke;
10. Megan Livermore (CEO of the Oregon Professional Liability Fund);
11. Oregon Attorney Bernard Moore;
12. Oregon Attorney Andrew Brandsness;
13. Oregon Attorney Chase Beguin;
14. Oregon Law Firm Cauble & Whittington LLP; and
15. Senior U.S. District Judge Robert Kugler.³

In his First Amended Complaint in the 2023 Lawsuit, Mr. Rote alleges violations of his First Amendment rights pursuant to 42 U.S.C. § 1983, violations of his Fourteenth Amendment rights to due process pursuant to 42 U.S.C. § 1983, and conspiracy to violate his civil rights pursuant to 42 U.S.C. § 1985. Many of the facts alleged by Mr. Rote in the 2023 Lawsuit are similar, at least in many material respects, to the facts that he alleged in his 2019 and 2022 Lawsuits.

DISCUSSION

A. 2022 Lawsuit (Case No. 3:22-cv-00985-SI)

1. In his 2022 Lawsuit, Mr. Rote asserts claims against the following Defendants that either (1) are substantially similar to the claims that he asserted against these same

³ In his 2023 Lawsuit, Mr. Rote's case caption does not perfectly match the text of his First Amended Complaint. The Court's list stated above is derived from the text of Mr. Rote's First Amended Complaint in the 2023 Lawsuit, ECF 37.

Defendants in his 2019 Lawsuit or (2) are deficient for substantially the same reasons that those claims were held to be insufficient in the 2019 Lawsuit: Oregon Judicial Department; Oregon Professional Liability Fund; Oregon Circuit Judge Kathie Steele; Carol Bernick, and Nena Cook. Accordingly, the Court dismisses with prejudice Mr. Rote's claims in his 2022 Lawsuit against these Defendants.

2. In his 2022 Lawsuit, Mr. Rote asserts claims against new Defendants who are judicial officers (or quasi-judicial officers) that fail for substantially the same reasons based on judicial immunity that Mr. Rote's claims against judicial officers were dismissed in his 2019 Lawsuit. Accordingly, the Court dismisses with prejudice Mr. Rote's claims in his 2022 Lawsuit against the following Defendants: Oregon Circuit Judge Ann Lininger; Oregon Circuit Judge Alison Emerson; Oregon Court of Appeals Judge Josephine Money; Oregon Court of Appeals Judge Jacqueline Kamins; Oregon Circuit Judge Kathie Steele; Oregon Circuit Judge Pro Tempore Michael Wise; and Oregon Chief Justice Martha Walters. The Court also GRANTS the motion to dismiss filed by the State of Oregon Defendants (ECF 15) and their Renewed Motion to Dismiss (ECF 36) for the reasons stated by those Defendants in their motion.

3. In his 2022 Lawsuit, Mr. Rote asserts claims against Megan Livermore that are deficient for substantially the same reasons that those claims were held to be insufficient in the 2019 Lawsuit when asserted against her predecessor Carol Bernick. Accordingly, the Court dismisses with prejudice Mr. Rote's claims in his 2022 Lawsuit against Megan Livermore.

4. This leaves Mr. Rote's claims asserted in his 2022 Lawsuit against the following Defendants: Jeffrey Edelson, Deschutes County, the Deschutes County Sheriff's Department, the Deschutes County Sheriff, Matthew Yium, Nathan Steele, Ward Green, and Anthony Albertazzi. Regarding these remaining Defendants in the 2022 Lawsuit, the Court rules as follows:

- a. The Court LIFTS the STAY entered on August 23, 2023 (ECF 68).
- b. The Court GRANTS Nathan Steele's motion to dismiss (ECF 24) and his renewed motion to dismiss (ECF 45) for the reasons stated in those two motions.
- c. The Court GRANTS the motion to dismiss filed by Deschutes County, the Deschutes County Sheriff's Department, and the Deschutes County Sheriff (ECF 28) and their renewed motion to dismiss (ECF 42) for the reasons stated in those motions.
- d. The Court GRANTS Jeffrey Edelson's motion to dismiss (ECF 29) and his renewed motion to dismiss (ECF 41) for the reasons stated in those motions.
- e. The Court GRANTS Anthony Albertazzi's two motions to dismiss (ECF 31 and ECF 39) for the reasons stated in those motions.
- f. The Court GRANTS the motion to dismiss filed by Matthew Yium, *et al.* (ECF 33) and his renewed motion to dismiss (ECF 43) for the reasons stated in those motions.
- g. The Court GRANTS Defendant Ward Greene's motion for summary judgment (ECF 12) for the reasons stated in that motion.
- h. If Mr. Rote believes that he can cure the deficiencies identified, he may file a Second Amended Complaint in his 2022 Lawsuit not later than April 12, 2024, ONLY AGAINST THE FOLLOWING SIX DEFENDANTS: JEFFREY EDELSON, DESCHUTES COUNTY, DESCHUTES COUNTY SHERIFF, MATTHEW YIUM, NATHAN STEELE, AND ANTHONY ALBERTAZZI.

B. 2023 Lawsuit (Case No. 3:23-cv-01016-SI)

1. In his 2023 Lawsuit, Mr. Rote asserts claims against the following Defendants that either (1) are substantially similar to the claims that he asserted against these same Defendants in his 2019 Lawsuit or (2) are deficient for substantially the same reasons that those claims were held to be insufficient in the 2019 Lawsuit: Oregon Judicial Department; Oregon

State Bar Professional Liability Fund; and Senior U.S District Judge Robert Kugler.

Accordingly, the Court dismisses with prejudice Mr. Rote's claims in his 2023 Lawsuit against these Defendants.

2. In his 2023 Lawsuit, Mr. Rote asserts claims against new Defendants who are judicial officers (or quasi-judicial officers) that fail for substantially the same reasons based on judicial immunity that Mr. Rote's claims against judicial officers were dismissed in his 2019 Lawsuit. Accordingly, the Court dismisses with prejudice Mr. Rote's claims in his 2023 Lawsuit against the following Defendants: Chief Justice of the Oregon Supreme Court Meagan Flynn; Chief Judge of the Oregon Court of Appeals Erin Lagesen; Oregon Circuit Judge Michael Wetzel; Oregon Senior Circuit Judge Leslie Roberts; Oregon Senior Circuit Judge Douglas Van Dyk; Oregon Tax Court Judge Robert Manicke; and Appellate Commissioner for the Oregon Court of Appeals Theresa Kidd.

3. In his 2023 Lawsuit, Mr. Rote asserts claims against Megan Livermore that are deficient for substantially the same reasons that those claims were held to be insufficient in the 2019 Lawsuit when asserted against her predecessor Carol Bernick. Accordingly, the Court dismisses with prejudice Mr. Rote's claims in his 2023 Lawsuit against Megan Livermore.

4. On page 6 of Mr. Rote's Response to Order to Show Cause (ECF 40), Mr. Rote voluntarily dismisses without prejudice Defendants Bernard Moore and Andrew Brandsness.

5. This leaves Mr. Rote's claims asserted in his 2023 Lawsuit against only Defendants Chase Beguin and Cauble & Whittington LLP, who have not yet responded to Mr. Rote's pleading. (*See* ECF 30 and ECF 36.)

6. Regarding the 2023 Lawsuit, the Court rules as follows:

a. The Court LIFTS the STAY entered on August 23, 2023 (ECF 36).

b. The Court GRANTS the motion to dismiss filed by the Oregon Professional Liability Fund and Megan Livermore (ECF 18) for the reasons stated in that motion and above.

c. The Court DENIES Mr. Rote's motion for preliminary injunction (ECF 21) and for disqualification of counsel (ECF 23) for lack of adequate grounds for either motion.

d. The Court DENIES AS MOOT Bernard Moore and Andrew Brandness' Motion to Dismiss and Motion for Attorney Fees (ECF 35).

e. Defendants Chase Beguin and Cauble & Whittington LLP shall respond to Mr. Rote's First Amended Complaint in the 2023 Lawsuit not later than April 12, 2023, and Mr. Rote may proceed in his 2023 Lawsuit only against these two remaining Defendants.

CONCLUSION

In the 2022 Lawsuit, Case No. 3:22-cv-00985-SI, the Court LIFTS the STAY previously entered and now GRANTS the following motions: ECF Nos. 12, 15, 24, 28, 29, 31, 33, 36, 39, 41, 42, 43, and 45. If Mr. Rote believes that he can cure the deficiencies identified, he may file a Second Amended Complaint in his 2022 Lawsuit not later than April 12, 2024 ONLY AGAINST THE FOLLOWING SIX DEFENDANTS: JEFFREY EDELSON, DESCHUTES COUNTY, THE DESCHUTES COUNTY SHERIFF, MATTHEW YIUM, NATHAN STEELE, AND ANTHONY ALBERTAZZI.

In the 2023 Lawsuit, Case No. 3:23-cv-01016-SI, the Court LIFTS the STAY previously entered and now rules on the following motions as follows: (a) The Court GRANTS ECF 18, DENIES ECF 21, DENIES ECF 23, and DENIES AS MOOT ECF 35. Defendants Chase Beguin and Cauble & Whittington LLP shall respond to Mr. Rote's First Amended Complaint in the

2023 Lawsuit not later than April 12, 2023, and Mr. Rote may proceed in his 2023 Lawsuit only against these two remaining Defendants.

IT IS SO ORDERED.

DATED this 28th day of March, 2024.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge